IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an Application for Bail under the Provisions of section 83 (2) of the Poisons, Opium and Dangerous Drugs Ordinance as amended by the Act No. 41 of 2022.

The Democratic Socialist Republic of Sri Lanka

Complainant

CA Case No: BAL/507/2023
HC- Homagama
Case No: HC 14/2021

Vs.

Galhena Hewage Prasanna Priyanjith

Accused

And Now

Galhena Hewage Prasanna Priyanjith

Accused- Petitioner

Vs.

1. The Hon. Attorney General,
   Attorney General's Department,
   Colombo 12.

Complainant – Respondent

2. Superintendent of Excise,
   Excise Narcotic Bureau,
   No. 15, Park Avenue, Borella,
   Colombo 08.

Respondent

Before: **R. Gurusinghe J.**

&

M.C.B.S. Morais J.

Counsel: Nehara Randeniya for the Accused- Petitioner.

Damithini de Silva, SSC for the Respondents.

Inquiry on: 01.02.2024

Decided On: **04.06.2024**

M.C.B.S. Morais J.

The Petitioner is the Accused, named in the case bearing No. HC 14/2021 in the High Court of Homagama. It is apparent that the Accused was arrested on or about 05.02.2019 at his residence in Piliyandala and produced before the Magistrate Court of Maligakanda in case bearing No. B 3985/2019 dated 06.02.2019. The accused was indicted in the High Court of Homagama for having in possession and trafficking of 79.015 kg of 'Diacetylmorphine' alias Heroin. According to the 'B report' another two Suspects were arrested while traveling in a car and having in possession of Heroin and this Accused was arrested upon the information received from the said two Suspects.

It is apparent that the Accused has made a Bail Application to the High Court and it was refused by the learned High Court Judge by its order dated 07.01.2022.

The Petitioner has made this application before us under section 83 of the Poisons, Opium and Dangerous Drugs (Amendment) Act, No.41 of 2022. As for the provisions of section 83(2),

> *"83(2) notwithstanding the provisions of sections 84 and 85, a person suspected or accused of an offence under subsection (1) of section 54A and section 54B-*

(a) of which the pure quantity of the dangerous drug, trafficked, imported, exported, or possessed is ten grams or above in terms of the report issued by the Government Analyst under section 77A; and

(b) Which is punishable with death or life imprisonment, shall not be released on bail except by the Court of Appeal in exceptional circumstances."

When applied in relation to the material before us, in paragraph 14 of the petition, the Petitioner pleads certain grounds which are alleged as exceptional grounds and they are as follows:

I. That the 2nd respondent arrested the petitioner without a justifiable reason and the said arrest solely focused to keep the petitioner in remand custody for a lengthy period of time.
II. That the petitioner denies all allegations leveled against him as no illegal substance was recovered either form his possession in fact, they were introduced to him after he was arrested.
III. Two others persons arrested prior to the arrest of the petitioner were granted bail by the Colombo High Court.
IV. The petitioner has been languishing in the remand prison for a period nearly 4 and half years since the date of his arrest.
V. The 2nd respondent failed to state the place of the house or elsewhere or the body part of the petitioner from where the said parcels were found in his initial facts report to the Magistrate's Court.
VI. The trial against the petitioner has not been commenced up to fate not even the pre-trial conference and it will take considerable period to conclude the trial.

In addition to above, in paragraph 15 of the petition, the Petitioner pleads for some other grounds to consider in granting bail.

I. The petitioner has no previous convictions.
II. That the petitioner is a father of four and two of his adult off springs receiving higher education have no means of able support for their children.
III. The family members of the petitioner are undergoing many hardships due to the fact that he is languishing in remand custody for a lengthy time period.

IV. The mental condition family members of the petitioner also very badly affected due to the agony caused to them resulted from the petitioner being kept in remand custody for a long time.

However, in paragraph '15' of the petition supported by the paragraph '17' of the affidavit submitted by the Accused-Petitioner states that he has no previous convictions. On careful perusal of the material submitted by the Petitioner himself it is apparent that he has been convicted for a different offence under 298 of the Penal Code by the Magistrate Court of Puttlam. It is apparent that the Petitioner deliberately tried to mislead this court by saying that he has no previous convictions. In affirming that 'The petitioner has no previous convictions', he does not confine himself to the offences of same criteria.

Therefore, I am of the view that though there may have been material to grant bail to this Accused, this Accused Petitioner cannot be relied on as he has failed to come before this court with a full and a fair disclosure. When it comes to the issue of Bail, the character of the Accused is of much relevance, though irrelevant in deciding the guilt of the person. The Accused Petitioner has sworn to the fact that he has no previous convictions, which is seems to be quite untrue and misleading. A serious question arises as to the reason for nondisclosure especially in the light of proceedings before us indicate of that the Accused has a previous conviction.

S.P.Chengalvaraya Naidu (Dead) By Lrs. V Jaganath (Dead) By Lrs. And Others (1994) 1 SCC 1 held that;

"We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation."

On the *dicta* of Pathirana J. in ***W. S. Alphonso Appuhamy v. L. Hettiarachchi*** 77 NLR 131 at 135 emphasized the necessity of a full and fair disclosure of all the material facts to be placed before the Court.

Namunukula Plantations Limited V Minister of lands and Others SC Appeal No. 46/2008, Saleem Marsoof J. stated that;

"In other words, he owes a duty of utmost good faith (uberrima fides) to the court to make a full and complete disclosure of all material facts and refrain from concealing or suppressing any material fact within his knowledge or which he could have known by exercising diligence expected of a person of ordinary prudence."

It is impossible that Petitioner being the Accused has been unaware of his previous conviction. As for the dictum, *'falsus in uno, falsus in omnibus'*, the contentions of the Accused Petitioner cannot be relied upon.

As the Accused Petitioner has breached his paramount duty of disclosing the relevant, I am of the view that the Accused Petitioner does not deserve the reliefs prayed for, hence without proceeding to consider the merits on exceptional circumstances, this application for Bail is refused *in limine*.

Judge of the Court of Appeal

R. Gurusinghe J.

I agree

Judge of the Court of Appeal